

FILED 10 MAY 06 13:58 WJG:ORF

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

WALTER S. THORNE,

Plaintiff,

Civil No. 07-318-TC

v.

FINDINGS AND  
RECOMMENDATION

SUPERINTENDENT JEAN  
HILL, et al.,

Defendants.

COFFIN, Magistrate Judge.

By Order (#36) entered January 7, 2009, the stay of this action was lifted and the parties were allowed 30 days to advise the court of their intentions regarding this litigation.

On March 29, 2010, defendants filed a motion for summary judgment (#39). Plaintiff has never responded to the court's order or contacted the court since filing a notice of change of address on June 23, 2008.

Plaintiff has been released from custody and has apparently abandoned his claim in this proceeding. This

action should be dismissed for failure to prosecute.

In addition, defendants' un-controverted motion for summary judgment establishes:

1.) The medical condition giving rise to plaintiff's claim in this case was not sufficiently serious to establish a constitutional violation. Estelle v. Gamble, 429 U.S. 97 (1976); Doty v. County of Lasses, 37 F.3d 540, 546 (9<sup>th</sup> Cir. 1994).

2.) Defendants' were not deliberately indifferent to his medical needs and provided plaintiff with constitutionally adequate medical care. Affidavit of Eugene Fuchs; Shields v. Kunkle, 442 F.2d 409, 410 (9<sup>th</sup> Cir. 1971) (dispute between a prisoner and prison officials over the necessity for or extent of medical treatment does not give rise to a claim under 42 U.S.C. § 1983).

3.) If plaintiff's allegations can be construed as alleging a constitutional claim, defendants are entitled to qualified immunity from liability to plaintiff because they did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Tibbetts v. Kulongoski, 567 F.3d 529 (9<sup>th</sup> Cir. 2009) (quoting Harlow v. Fitzgeralds, 457 U.S. 800, 818 (1982)).

4.) There are no genuine issues of material fact remaining in this case and defendants are entitled to judgment as a matter of law. Fed. R. Civ. P. 56.

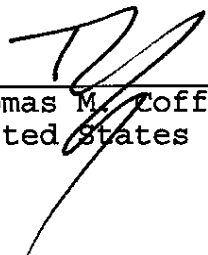
Accordingly, defendants' (un-opposed) Motion for Summary

Judgment (#39) should be allowed.

This action should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 6 day of May, 2010.



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Thomas M. Coffin  
United States Magistrate Judge